

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.369/PUN/2022

निर्धारण वर्ष / Assessment Year : 2013-14

Vikram Dattatray Ghadge, Sr.No.10, Mohammadwadi, Near Courinthian Club, Mohammadwadi, Hadapsar, Haveli, Pune 411 046 Maharashtra PAN : ANJPG2012L	Vs.	ITO, Ward-14(2), Pune
(Appellant)		Respondent)

Appellant by None
Respondent by Shri Arvind Desai

Date of hearing 01-09-2022
Date of pronouncement 01-09-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') on 27-07-2021 in relation to the assessment year 2013-14.

2. The appeal is time barred by 236 days. The extant appeal has been filed by the assessee on 19-05-2022. Prima-facie, the delay pertains to Covid-19 pandemic period. I, therefore, condone the delay and admit the appeal for disposal on merits by virtue of judgment of the Hon'ble Supreme Court in *Cognizance*

for Extension of Limitation, In re 438 ITR 296 (SC) read with judgment in Cognizance for Extension of Limitation, In re 432 ITR 206 (SC) dated 08-03-2021 and 421 ITR 314.

3. The only issue raised by the assessee in this appeal is against the confirmation of addition of Rs.14,16,306/- made by the Assessing Officer (AO) u/s.41(1) of the Act.

4. Briefly stated, the facts of the case are that the assessee is an individual working as a land dealing agent. During the course of assessment proceedings, the AO observed that the assessee had brought forward provision of Rs.14,16,306/- against labour payment. In the immediately preceding year, the assessee was working as a Civil Contractor, who disclosed turnover of Rs.59,41,390/- and income u/s.44AD. The assessee also claimed that certain payments to labour amounting to Rs.14,16,306/- were unpaid. This amount was brought forward as Opening balance to the year under consideration. The assessee claimed to have made payments to the concerned parties in the current year. The AO held such amount as income u/s.41(1) of the Act on the ground that the assessee could not furnish complete documentary evidence in support of payment, such as, receipt of payment,

bank statement etc., but only filed a list for receiver/beneficiaries with insufficient details. The Id.CIT(A) sustained the addition. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

5. I have heard the Id. DR and gone through the relevant material on record. There is no appearance from the side of assessee despite notice. It is seen that the assessee created provision on account of labour charges in the immediately preceding year when he was engaged in the business as Civil Contractor. This provision was cleared in the instant year by showing payment there against. When the brought forward provision is cleared by payment, there can be no scope for invoking section u/s.41(1) of the Act. Even if the AO's contention is accepted that the assessee did not lead proper evidence in support of the payments, still section 41(1) cannot be applied because it is not a case of remission or cession of trading liability. In view of the foregoing facts, I am satisfied that the addition has been wrongly made and sustained. I, therefore, order to delete it.

6. In the result, the appeal is allowed.

Order pronounced in the Open Court on 01st September, 2022.

Sd/-

(R.S.SYAL)

उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 01st September, 2022

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A) concerned
4. The CIT Concerned
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" / DR
5. 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	01-09-2022	Sr.PS
2.	Draft placed before author	01-09-2022	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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